



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OCT 24 2011

Kwame Vidal
2262 Mount Zion Road
Jonesboro, GA 30226

RE: MUR 6138

Dear Mr. Vidal:

This is in reference to the complaint you filed with the Federal Election Commission on December 1, 2008, concerning communications related to Honeycutt for Congress and Democrats for Good Government. Based on that complaint, on May 25, 2010, the Commission found that there was reason to believe Honeycutt for Congress and Scott Mackenzie, in his official capacity as treasurer ("Committee"), and Andrew Honeycutt knowingly and willfully violated 2 U.S.C. § 441d(a), the Committee violated 2 U.S.C. § 434(b), and Democrats for Good Government and David Knox violated 2 U.S.C. §§ 434(c) and 441d(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter. Also on May 25, 2010, the Commission was equally divided on whether to find reason to believe that the Committee, Andrew Honeycutt, Democrats for Good Government or David Knox violated 2 U.S.C. § 441h(a). However, after considering the circumstances of this matter, on October 18, 2011, the Commission determined to take no further action as to the Committee, Andrew Honeycutt, Democrats for Good Government and David Knox. At the same time, the Commission cautioned the Committee and Democrats for Good Government to ensure that their conduct is in compliance with the Act and the Commission regulations. Finally, on October 18, 2011, the Commission dismissed the allegation that Democrats for Good Government violated 2 U.S.C. §§ 433 and 434 by failing to register and report as a political committee. Accordingly, the Commission closed its file in this matter. The Factual and Legal Analyses, which more fully explain the Commission's dismissal and the earlier reason to believe findings, are enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

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Kwame Vidal
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The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8). If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Shana Broussard by MA

Shana Broussard
Attorney

Enclosures
Factual and Legal Analyses (4)

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Democrats for Good Government **MUR 6138**
David Knox

I. GENERATION OF MATTER

This matter was generated by a Complaint filed with the Federal Election Commission ("the Commission") by David Scott for Congress through its campaign manager Kwame Vidal. *See* 2 U.S.C. § 437g(a)(1).

II. INTRODUCTION

The Complaint alleges that Democrats for Good Government ("DGG") and David Knox violated the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with communications critical of U.S. Representative David Scott. First, the Complaint alleges that DGG's communication, "Voters," failed to include the proper disclaimer. *See* Complaint Exhibit C. In addition, the Complaint alleges that DGG fraudulently misrepresented itself as speaking on behalf of the Democratic Party because the "Corrupt" communication included a depiction of the Democratic Party donkey logo. *See* Complaint Exhibit B.

DGG and David Knox did not respond to the Complaint.¹ Because the "Voters" communication failed to include a disclaimer and it was not disclosed as an independent expenditure, the Commission finds reason to believe that Democrats for Good Government and David Knox violated 2 U.S.C. §§ 441d(a) and 434(c). The Commission

¹ The Commission forwarded the Complaint to DGG and David Knox on two separate occasions at two different addresses. Both were returned by the USPS as "undeliverable as addressed unable to forward." Subsequently, on March 25, 2009, the Commission forwarded a third notification to this new address. Finally, the Commission forwarded the Complaint to DGG and David Knox by Federal Express on April 22, 2009. Federal Express records indicate that the Complaint was delivered on April 23.

1 finds no reason to believe the allegation that Democrats for Good Government and David
2 Knox fraudulently misrepresented themselves as acting on behalf of the Democratic
3 Party. *See* 2 U.S.C. § 441h(a).

4 **III. FACTUAL AND LEGAL ANALYSIS**

5 **A. Factual Background**

6 In the 2008 general election, U.S. Rep. David Scott was the Democratic
7 incumbent in the 13th Congressional District of Georgia, opposed by Republican Deborah
8 T. Honeycutt. Honeycutt for Congress ("HFC") is the principal campaign committee for
9 Deborah T. Honeycutt.

10 **1. Democrats for Good Government and David Knox**

11
12 DGG is an organization created by David Knox.
13 *See* <http://www.democratsforgoodgovernment.com>. DGG is not registered as a political
14 committee with the Commission or the Georgia State Ethics Commission, and is not
15 registered with the IRS as a section 527 organization. According to DGG's website, it is
16 "[t]he place to get the facts about Democrats who are really doing the work for
17 Democrats." *See id.* However, the entire content of the website appears to focus on
18 material opposing a single candidate, Rep. Scott, including portions of local newspaper
19 articles that are highly critical of Rep. Scott. *See id.*

20 Knox is also the owner and operator of DK Intermedia, a website development
21 company. Both Knox and DK Intermedia were vendors to HFC for Deborah T.
22 Honeycutt's 2006 and 2008 congressional campaigns; Honeycutt faced Rep. Scott in both
23 general elections. The DK Intermedia website indicates it created an "informational site"

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1 for Honeycutt's 2006 congressional campaign.² According to HFC's disclosure reports,
2 the Committee disbursed \$250 to David Knox on February 28 and on March 13, 2006 for
3 "website and photos," \$750 and \$350 on May 9 and July 7, 2006, respectively, for
4 "consulting-graphics/website maintenance," and \$350 and \$250 on July 31, 2006 and
5 February 6, 2007, respectively, for "consulting-graphics/website." HFC disbursed \$525
6 to DK Intermedia on May 7, 2008 for internet consulting.

7 The website for Democrats for Good Government contains a link to
8 www.voteoutdavidscott.com.³ The site begins with a heading "Georgia's Congressional
9 13th District Corrupt Congre\$\$man," and continues with a cartoon figure identified as
10 Rep. Scott sitting at a desk surrounded by individuals identified as "Lobbyist" and piles
11 of cash with the U.S. Capitol in the background. The website directs the viewer to
12 "Check Him Out and Vote Him Out!!!" Several pages into the website is the cartoon
13 depiction of Scott sitting on a mound of cash also included on the "Corrupt"
14 communication. The website concludes, "No Disclaimer Necessary – We only work for
15 the government part-time (ourselves the rest of the time.) Sponsored by Democrats for
16 Good Government!"

17 **2. "Voters" Communication**

18 A copy of the "Voters" communication at issue is included with the Complaint as
19 Exhibit C. Both sides of "Voters" are headed with the same picture of Rep. Scott and the
20 words: "Representative Scott's records indicate he cares more about his wealth and

² The website states that "this site is no longer a part of this portfolio. There is no support for this candidate [sic]." [Emphasis in original]. http://www.dkextra.com/portfolio/web_port.htm

³ The website link, www.voteoutdavidscott.com is now closed; however, the website can be accessed through the Democrats for Good Government website found at <http://www.democratsforgoodgovernment.com/voteoutdavidscott.com>.

1 comfort than about education, employment and health needs of the citizens of Clayton,
2 Cobb, DeKalb, Douglas, Henry, and South Fulton Counties. Check his record and vote
3 him out." The communication then refers the reader to several websites.⁴ The other side
4 of "Voters" below the header contains the word "WHY" and lists purported reasons such
5 as "Tax Evasion" and "Misuse of Official Resources." Both sides of "Voters" include a
6 tagline, "Time for a Change from David Scott." Neither side of the communication
7 contains a disclaimer stating who paid for the communication. Finally, the bottom
8 portion of each side refers the reader to www.voteoutdavidscott.com and closes with
9 "Democrats for Good Government." See Complaint Exhibit C. There is no information
10 available regarding the production, distribution or costs associated with this
11 communication.

12 3. "Corrupt" Communication

13 A copy of the "Corrupt" communication at issue is included with the Complaint
14 as Exhibit B. One side of the communication begins with the heading "**CORRUPT**
15 **DAVID SCOTT,**" followed by a picture of Rep. Scott and the statement "David Scott is
16 **CORRUPT!!!**" The communication then refers the reader to
17 www.voteoutdavidscott.com. The communication also contains a depiction of the
18 Democratic Party donkey logo and the tagline, "Your Vote Counts for Change!" The
19 other side of the communication refers to Scott as "The Worst Black Congressperson,"
20 and includes a cartoon depiction of Rep. Scott sitting on a mound of cash with the U.S.
21 Capitol in the background. Both sides of the communication contain a disclaimer stating

⁴ The "Voters" communication listed the following websites: <http://www.beyonddelay.org/node/317>;
http://www.goodwillhinton.com/rep_david_scottsfiancial_shenanigans; and
<http://www.citizensforethics.org/node/30146>. The website links are no longer accessible.

1 that it was paid for by "DemocratsForGoodGovernment.com." See Complaint Exhibit B.
2 The available information does not indicate how this communication was distributed.

3 **B. Legal Analysis**

4 **1. "Voters" Communication Disclaimer**

5 The Complaint alleges that the "Voters" communication did not include the
6 required disclaimer. A political committee that makes a disbursement to finance a public
7 communication must include a disclaimer. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1).
8 Disclaimers are also required for public communications financed by any person that
9 expressly advocate the election or defeat of a clearly identified candidate. 2 U.S.C.
10 § 441d(a); 11 C.F.R. § 110.11(a)(2). The term "public communication" includes "mass
11 mailings" and "any other general public political advertising." 2 U.S.C. § 431(22);
12 11 C.F.R. § 100.26. Mass mailing is defined as a mailing by U.S. mail or facsimile of
13 more than 500 pieces of mail matter of an identical or substantially similar nature within
14 any 30-day period. 2 U.S.C. § 431(23); 11 C.F.R. § 100.27. The Commission has
15 determined that campaign literature "distributed to the general public at their place of
16 residence...constitutes general public political advertising." See MUR 4741 (Mary Bono
17 Committee) Factual and Legal Analysis (finding reason to believe that the Committee
18 violated 2 U.S.C. § 441d(a) by failing to include a disclaimer on campaign material left
19 on doorknobs of residences).

20 The disclaimer for a communication that is paid for and authorized by a
21 candidate, an authorized committee of a candidate, or its agents, shall clearly state that
22 the communication has been paid for by such authorized committee. 2 U.S.C.
23 § 441d(a)(1). The disclaimer for a communication not authorized by the candidate shall

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1 clearly state the name and permanent street address, telephone number or World Wide
2 Web address of the person who paid for the communication and state that the
3 communication is not authorized by any candidate or candidate's committee. 2 U.S.C.
4 § 441d(a)(3). The Commission now addresses the communication in question.

5 The Complaint alleges that the "Voters" communication violated the Act's
6 disclaimer provisions. The communication itself states neither who paid for it nor
7 whether it was authorized by a candidate or candidate committee. *See* 2 U.S.C.
8 § 441d(a). David Knox and DGG did not respond to the Complaint. The dissemination
9 of "Voters" determines whether it is a public communication and thus required a
10 disclaimer under the Act. *See id*; 11 C.F.R. §§ 110.11(a) and 100.26. It appears that
11 "Voters" may constitute a public communication in the form of general public political
12 advertising. *See* 11 C.F.R. § 100.26; *see also* MUR 4741 (Mary Bono Committee)
13 Factual and Legal Analysis. "Voters" expressly advocates the defeat of Rep. Scott with
14 phrases such as "Voters vote him out," and "Time for a Change from David Scott." *See*
15 Complaint Exhibit C; 11 C.F.R. § 100.22(a). Thus, the communication should have
16 contained a disclaimer. *See* 2 U.S.C. § 441d(a).

17 As to what the "Voters" disclaimer should have stated, the available information
18 is limited as to whether DGG and Knox acted with the involvement of a candidate or
19 candidate committee in the payment, production, and distribution of "Voters." If DGG or
20 Knox acted without such involvement, "Voters" was not authorized by a candidate and
21 thus required by the Act to include the name, permanent street address, telephone number
22 or website address of the person that paid for the communication and state that the
23 communication was not authorized by any federal candidate or candidate's committee.

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1 See 2 U.S.C. § 441d(a)(3).⁵ The line at the bottom of both sides of the "Voters" card,
2 "Democrats for Good Government," does not satisfy this requirement. Because "Voters"
3 appears to be a communication produced by DGG and David Knox and appears to lack
4 an appropriate disclaimer, the Commission finds reason to believe that Democrats for
5 Good Government and David Knox violated 2 U.S.C. § 441d(a).

6 2. Independent Expenditure Reporting for "Voters" Communication

7 If DGG or David Knox spent more than \$250 on "Voters," and the
8 communication was not coordinated with any candidate, DGG or Knox was required to
9 file an independent expenditure report with the Commission. See 2 U.S.C. § 434(c). An
10 independent expenditure is "an expenditure by a person expressly advocating the election
11 or defeat of a clearly identified candidate" and "that is not made in concert or cooperation
12 with or at the request or suggestion of such candidate, the candidate's authorized political
13 committee, or their agents, or a political party committee or its agents." 2 U.S.C.
14 § 431(17); 11 C.F.R. § 100.16. Under the Act, every person who makes independent
15 expenditures in excess of \$250 must file a report that discloses information on its

⁵ If DGG or David Knox paid for "Voters" but a candidate or candidate's committee, or its agents, authorized the communication, "Voters" should have included a disclaimer pursuant to 2 U.S.C. § 441d(a)(2). The question then arises whether the "Voters" communication was coordinated with the candidate. If "Voters" met the criteria set forth in the Commission's regulations for coordinated communications, then DGG's or Knox's payment for the communication would constitute a potentially excessive in-kind contribution to the candidate committee. See 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. §§ 109.21 and 109.22. The criteria for a coordinated communication consists of three standards – payment by someone other than the candidate or her committee; satisfaction of one or more of the four content standards; and satisfaction of one or more of the six conduct standards. 11 C.F.R. § 109.21. The payment standard would be satisfied if DGG/Knox or another person other than the candidate committee paid for "Voters." The content standard is satisfied because the communication expressly advocates the defeat of Rep. Scott, and the conduct standard of the coordination regulations would be satisfied if the communication was created at the request or suggestion, material involvement, or substantial discussion with the candidate, committee, or her agents. See 11 C.F.R. § 109.21(d). Since the Commission has no information at this time regarding the costs of "Voters" or indicating that a candidate or candidate committee was involved with this communication, the Commission makes no determination at this time as to a possible resulting excessive contribution by DGG or David Knox.

1 expenditures and identify each person who made a contribution in excess of \$200 in a
2 calendar year and each person who gave more than \$200 for the purpose of furthering an
3 independent expenditure. 2 U.S.C. § 434(c). It is likely that the costs associated with the
4 production and distribution of "Voters" exceeded the \$250 independent expenditure
5 reporting threshold. For example, HFC disclosure reports reflect that the Committee paid
6 \$1,385.75 for the production of the "Corrupt" communication. Therefore, the
7 Commission finds reason to believe that Democrats for Good Government and David
8 Knox violated 2 U.S.C. § 434(c).⁶

9 **3. Alleged Fraudulent Misrepresentation**

10
11 Finally, the Complaint alleges that, by including a depiction of a logo similar to
12 the logo of the Democratic Party on "Corrupt," David Knox, acting on behalf of DGG,
13 fraudulently misrepresented that the mailer was disseminated by the Democratic Party.
14 Complaint at 5. The Act prohibits federal candidates and their employees or agents from
15 fraudulently misrepresenting themselves, or any organization under their control, as
16 speaking or otherwise acting on behalf of any other candidate or political party on a
17 matter which is damaging to such other candidate or party. 2 U.S.C. § 441h(a).⁷ In past
18 enforcement matters dealing with fraudulent misrepresentation allegations, the
19 Commission has focused its analysis on whether the Respondent was acting like the
20 "official" party organization. *See* MUR 4919 (Charles Ball for Congress); *see also* MUR

⁶ There is an additional independent expenditure reporting requirement at 2 U.S.C. § 434(g) (persons that make independent expenditures aggregating \$1,000 or more after the 20th day, but no more than 24 hours before the date of an election, must file a report within 24 hours with the Commission describing the expenditure). In view of the lack of information as to the amount DGG or David Knox spent on "Voters," as well as to the timing of its distribution (it may have been disseminated within 20 days before the July 15, 2008 primary election) the Commission makes no determination at this time as to whether section 434(g) reporting was also required.

⁷ Section 441h(b) prohibits the fraudulent solicitation of funds, which seems to be further afield here where the available information does not indicate that DGG used the logo in connection with soliciting funds.

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1 5444 (National Democratic Campaign Comm.). In MUR 4919 (Ball), the Commission
2 found reason to believe that the Committee, Campaign Manager, and Finance Director
3 knowingly and willfully violated 2 U.S.C. § 441h, and that the Committee treasurer
4 violated 2 U.S.C. § 441h, when Respondents, on behalf of the Republican candidate in
5 the California's 10th Congressional district, disseminated a communication within days of
6 the general election to Democratic voters in the district that was purportedly prepared by
7 a fictitious local party committee, the East Bay Democratic Committee, and signed by a
8 Democratic Congressman of a neighboring district that expressly advocated the defeat of
9 the Democratic incumbent. The communication's text suggested that committee was a
10 legitimate organization within the Democratic Party by including language such as
11 "Representing all Democrats in the East Bay." The communication urged the defeat of
12 the incumbent but did not include a disclaimer identifying who paid for it or whether it
13 was authorized by any candidate or committee.⁸

14 Unlike the communication in MUR 4919, in the instant matter, the "Corrupt"
15 communication cannot be construed as an instrument of an "official organization" within
16 the Democratic Party. Neither the complete name of the organization "Democrats for
17 Good Government" nor the use of the word "Democrat" is sufficient to conclude that
18 Respondents attempted to damage the Democratic Party. *See* 2 U.S.C. § 441h(a).
19 "Corrupt" does not contain text designed to make the communication appear that the
20 source of this communication was the Democratic Party. *See* Complaint Exhibit B.
21 Although Deborah T. Honeycutt was the Republican nominee in the 2008 general
22 election against Rep. Scott, the presence of the donkey logo on the "Corrupt"

⁸ After an investigation, the Commission found probable cause to believe as to Charles Ball for Congress, its treasurer and its campaign manager and conciliated with these respondents.

1 communication does not rise to the level of a violation of section 441h(a). The donkey
2 logo, which is a generic symbol of the Democratic Party, is minimally displayed on the
3 bottom left portion of the "Corrupt" communication that expressly advocates the defeat
4 of Rep. Scott. *See* Complaint Exhibit B. The available information does not suggest that
5 DGG represents itself as an arm of the official Democratic Party structure, such as a
6 district or local party committee as defined at 11 C.F.R. § 100.14(b). Accordingly, the
7 Commission finds no reason to believe that Democrats for Good Government and David
8 Knox violated 2 U.S.C. § 441h(a).

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Honeycutt for Congress **MUR 6138**
and Scott Mackenzie, in his official capacity
as treasurer

I. GENERATION OF MATTER

This matter was generated by a Complaint filed with the Federal Election Commission ("the Commission") by David Scott for Congress through its campaign manager Kwame Vidal. *See* 2 U.S.C. § 437g(a)(1).

II. INTRODUCTION

The Complaint alleges that Honeycutt for Congress and Scott Mackenzie, in his official capacity as treasurer ("HFC") violated the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with communications critical of Honeycutt's opponent, U.S. Representative David Scott. First, the Complaint alleges that the communication titled "Corrupt" included a disclaimer stating that it was paid for by DemocratsforGoodGovernment.com, even though an invoice and HFC disclosure report indicate that HFC in fact paid for it. *See* Complaint Exhibit B. Next, the Complaint alleges that HFC did not timely disclose its payment for the "Corrupt" communication. Finally, the Complaint alleges that HFC fraudulently misrepresented itself as speaking on behalf of the Democratic Party because the "Corrupt" communication included a depiction of the Democratic Party donkey logo. *See id.*

In its Response, HFC acknowledges that the Committee made a disbursement on August 29, 2008, in the amount of \$1,385.75 to 48HourPrint.com. HFC also forwarded a page from its amended 2008 October Quarterly Report that disclosed this disbursement.

1 The timing and amount of HFC's payment corresponds to an invoice for the "Corrupt"
2 communication included with the Complaint. See Complaint Exhibit A and HFC
3 amended 2008 October Quarterly Report pp. 1200. HFC did not otherwise address the
4 "Corrupt" communication.

5 As set forth below, the Commission finds reason to believe that Honeycutt for
6 Congress and Scott Mackenzie, in his official capacity as treasurer, knowingly and
7 willfully violated 2 U.S.C. § 441d(a) because it appears that it authorized and paid for a
8 communication that identified another entity paid for it. In addition, because HFC did
9 not disclose the disbursement for the "Corrupt" communication on its initial 2008
10 October Quarterly Report, the Commission finds reason to believe that Honeycutt for
11 Congress and Scott Mackenzie, in his official capacity as treasurer, violated 2 U.S.C.
12 § 434(b). The Commission finds no reason to believe the allegation that Honeycutt for
13 Congress and Scott Mackenzie, in his official capacity as treasurer, fraudulently
14 misrepresented themselves as acting on behalf of the Democratic Party. See
15 2 U.S.C. § 441h(a).

16 **III. FACTUAL AND LEGAL ANALYSIS**

17 **A. Factual Background**

18 In the 2008 general election, Deborah T. Honeycutt was the Republican candidate
19 for Congress opposing the Democratic incumbent, Rep. David Scott, in the 13th
20 Congressional District of Georgia. HFC is the principal campaign committee for
21 Deborah T. Honeycutt, and her spouse, Andrew Honeycutt, is the Committee's campaign
22 chairman. See Response.

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1. Democrats for Good Government and David Knox

DGG is an organization created by David Knox.

See <http://www.democratsforgoodgovernment.com>. DGG is not registered as a political committee with the Commission or the Georgia State Ethics Commission, and is not registered with the IRS as a section 527 organization. According to DGG's website, it is "[t]he place to get the facts about Democrats who are really doing the work for Democrats." See *id.* However, the entire content of the website appears to focus on material opposing a single candidate, Rep. Scott, including portions of local newspaper articles that are highly critical of Rep. Scott. See *id.*

Knox is also the owner and operator of DK Intermedia, a website development company. Both Knox and DK Intermedia were vendors to HFC for Deborah T. Honeycutt's 2006 and 2008 congressional campaigns; Honeycutt faced Rep. Scott in both general elections. The DK Intermedia website indicates it created an "informational site" for Honeycutt's 2006 congressional campaign.¹ According to HFC's disclosure reports, the Committee disbursed \$250 to David Knox on February 28 and on March 13, 2006 for "website and photos," \$750 and \$350 on May 9 and July 7, 2006, respectively, for "consulting-graphics/website maintenance," and \$350 and \$250 on July 31, 2006 and February 6, 2007, respectively, for "consulting-graphics/website." HFC disbursed \$525 to DK Intermedia on May 7, 2008 for internet consulting.

¹ The website states that "this site is no longer a part of this portfolio. There is no support for this candidate [sic]." [Emphasis in original]. http://www.dkextra.com/portfolio/web_port.htm

1 The website for Democrats for Good Government contains a link to
2 www.voteoutdavidscott.com.² The site begins with a heading "Georgia's Congressional
3 13th District Corrupt Congre\$\$man," and continues with a cartoon figure identified as
4 Rep. Scott sitting at a desk surrounded by individuals identified as "Lobbyist" and piles
5 of cash with the U.S. Capitol in the background. The website directs the viewer to
6 "Check Him Out and Vote Him Out!!!" Several pages into the website is the cartoon
7 depiction of Scott sitting on a mound of cash as included on the "Corrupt"
8 communication. The website concludes, "No Disclaimer Necessary – We only work for
9 the government part-time (ourselves the rest of the time.) Sponsored by Democrats for
10 Good Government!"

11 **2. "Corrupt" Communication**

12 A copy of the "Corrupt" communication at issue is included with the Complaint
13 as Exhibit B. One side of the communication begins with the heading "CORRUPT
14 DAVID SCOTT," followed by a picture of Rep. Scott and the statement "David Scott is
15 CORRUPT!!!" The communication then refers the reader to
16 www.voteoutdavidscott.com. The communication also contains a depiction of the
17 Democratic Party donkey logo and the tagline, "Your Vote Counts for Change!" The
18 other side of the communication refers to Scott as "The Worst Black Congressperson,"
19 and includes a cartoon depiction of Rep. Scott sitting on a mound of cash with the U.S.
20 Capitol in the background. Both sides of the communication contain a disclaimer stating
21 that it was paid for by "DemocratsForGoodGovernment.com." See Complaint Exhibit B.

² The website link, www.voteoutdavidscott.com is now closed; however, the website can be accessed through the Democrats for Good Government website found at <http://www.democratsforgoodgovernment.com/voteoutdavidscott.com>.

1 Neither the Complaint nor HFC's Response provides information regarding the
2 distribution of this communication.

3 The Complaint also provided an invoice dated August 26, 2008 from
4 48HourPrint.com in the amount of \$1,385.75 for 25,000 double-sided "3.5 x 8.5 Rack
5 Cards -- Corrupt." Complaint Exhibit A. The invoice was billed to "Andrew" at 160
6 Deer Forest Trail, Fayetteville, Georgia, and includes a "blind shipping address" for
7 "David" at 2326 Nicole Drive, Hampton, Georgia. The invoice "Ship to" addressee is
8 David Knox at an address in Jonesboro, Georgia. Public records indicate that Deborah
9 and Andrew Honeycutt are the owners of the Fayetteville address. HFC disclosed a
10 \$1,385.75 payment to 48 Hour Print on August 29, 2008 for "Printing" that corresponds
11 to the invoice.

12 **B. Legal Analysis**

13 **1. "Corrupt" Communication Disclaimer**

14 The Complaint alleges that the "Corrupt" communication did not include the
15 required disclaimer. A political committee that makes a disbursement to finance a public
16 communication must include a disclaimer. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1).
17 Disclaimers are also required for public communications financed by any person that
18 expressly advocate the election or defeat of a clearly identified candidate. 2 U.S.C.
19 § 441d(a); 11 C.F.R. § 110.11(a)(2). The term "public communication" includes "mass
20 mailings" and "any other general public political advertising." 2 U.S.C. § 431(22);
21 11 C.F.R. § 100.26. Mass mailing is defined as a mailing by U.S. mail or facsimile of
22 more than 500 pieces of mail matter of an identical or substantially similar nature within
23 any 30-day period. 2 U.S.C. § 431(23); 11 C.F.R. § 100.27. The Commission has

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1 determined that campaign literature "distributed to the general public at their place of
2 residence...constitutes general public political advertising." See MUR 4741 (Mary Bono
3 Committee) Factual and Legal Analysis (finding reason to believe that the Committee
4 violated 2 U.S.C. § 441d(a) by failing to include a disclaimer on campaign material left
5 on doorknobs of residences).

6 The disclaimer for a communication that is paid for and authorized by a
7 candidate, an authorized committee of a candidate, or its agents, shall clearly state that
8 the communication has been paid for by such authorized committee. 2 U.S.C.
9 § 441d(a)(1). The disclaimer for a communication not authorized by the candidate shall
10 clearly state the name and permanent street address, telephone number or World Wide
11 Web address of the person who paid for the communication and state that the
12 communication is not authorized by any candidate or candidate's committee. 2 U.S.C.
13 § 441d(a)(3). The Commission now addresses the communication in question.

14 The Complaint alleges that HFC violated the Act's disclaimer provisions when it
15 paid for a communication, "Corrupt," that failed to state that the Committee paid for it.
16 The available information, including the Committee's Response and amended 2008
17 October Quarterly Report, and the invoice, see Complaint Exhibit A, indicates that HFC
18 in fact paid \$1,385.75 for 25,000 "Corrupt" "rack cards" on August 29, 2008. However,
19 neither the "Corrupt" communication itself, the Complaint, Response, nor other available
20 information indicates how the communication was disseminated. The Committee's
21 amended October Quarterly Report includes disbursements on September 5, 2008 to
22 Donald W. Allen II, in the amount of \$1,000.00 for consulting/canvassing and on
23 September 25, 2008 to Dan P. Young, in the amount of \$4,000 for consulting/canvassing,

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1 which may be related to the dissemination of "Corrupt." If the communication qualifies
2 as a public communication, i.e., if it was mass mailed, *see* 11 C.F.R. § 100.27, or
3 otherwise qualifies as general public political advertising, the communication would need
4 to contain a disclaimer stating that HFC paid for and authorized the communication. *See*
5 2 U.S.C. § 441d(a)(1). Because the communication did not include such a disclaimer,
6 HFC may have violated 2 U.S.C. § 441d(a).

7 The available information further suggests that such a violation may have been
8 knowing and willful. The phrase knowing and willful indicates that "actions [were] taken
9 with full knowledge of all of the facts and recognition that the action is prohibited by
10 law." 122 Cong. Rec. H 3778 (daily ed. May 3, 1976); *see also* *AFL-CIO v. FEC*, 628
11 F.2d 97-98, 101-02 (D.C. Cir.), *cert. denied*, 449 U.S. 982 (1980) (noting that a "willful"
12 violation includes "such reckless disregard of the consequences as to be equivalent to a
13 knowing, conscious, and deliberate flaunting of the Act," but concluding on the facts
14 before it that this standard was not met); *National Right to Work Comm. v. FEC*, 716 F.2d
15 1401, 1403 (D.C. Cir. 1983) (same). The available information indicates that the
16 Committee, through its agent Andrew Honeycutt, ordered the "Corrupt" communication,
17 and as indicated by the 48HourPrint.com invoice, provided the personal address of the
18 candidate and campaign chairman as the billing address. However, "Corrupt" includes a
19 disclaimer, "Paid for by DemocratsforGoodGovernment.com," and contains the same
20 headline, "The Worst Black Congressperson," and cartoon depiction of Rep. Scott as
21 included on the DGG website.

22 HFC's apparent efforts to try to hide its involvement with the "Corrupt"
23 communication so that any recipients would not know that Andrew Honeycutt or the

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1 Committee authorized and paid for "Corrupt" further supports a recommendation that
2 HFC and Andrew Honeycutt knowingly and willfully violated the Act. HFC's Response
3 does not address any relationship with DGG or David Knox; however, the available
4 information indicates an ongoing relationship between HFC and David Knox. *See supra*
5 pp. 3 ln. 10-19. In addition, the invoice at Complaint Exhibit A further supports this
6 ongoing relationship because it lists the name "Andrew" and the billing address for the
7 candidate and her spouse and campaign chairman, Andrew Honeycutt, as well as the
8 name "David." *See supra* pp. 5 ln. 3-11. By paying for a communication with a
9 disclaimer stating that a third-party organization paid for it, HFC attempted to conceal its
10 identity as the person that authorized and paid for the 25,000 rack cards. HFC attempted
11 to avoid any explicit connection between the "Corrupt" communication and the
12 Honeycutt campaign by stating that DGG paid for the "Corrupt" communication.³ Thus,
13 Respondents appear to have knowingly and willfully violated the Act. Accordingly, the
14 Commission finds reason to believe that Honeycutt for Congress and Scott Mackenzie, in
15 his official capacity as treasurer, knowingly and willfully violated 2 U.S.C. § 441d(a).

16 **2. Disclosure of Payment for "Corrupt" Communication**

17 HFC's disclosure reports must disclose all disbursements. *See* 2 U.S.C.
18 § 434(b)(4). HFC did not disclose the \$1,385.75 disbursement to 48HourPrint.com for
19 the "Corrupt" communication in its initial October Quarterly Report filed on October 15,
20 2008. The Complaint was initially filed on October 21, 2008, but was returned to the

³ The candidate, political committee, and professional treasurer were experienced. Honeycutt was a candidate in 2006 as well as 2008 and HFC's treasurer, Scott Mackenzie, is an "FEC Compliance Officer" with BFW Direct, a Washington, D.C. political consulting firm. HFC's disclosure reports indicated total activity in amounts exceeding \$1.1 million and \$4.7 million for the 2006 and 2008 election cycles, respectively.

1 Complainant to correct a form defect; the Complaint was properly submitted on
2 November 26, 2008. On October 22, 2008, the Committee filed an amended quarterly
3 report that disclosed the \$1,385.75 disbursement.⁴ See 2 U.S.C. § 434(b). HFC thus
4 amended the report after the Complainant filed the Complaint. Because the disbursement
5 was not disclosed on HFC's original October Quarterly Report, the Commission finds
6 reason to believe that Honeycutt for Congress and Scott Manzenie, in his official
7 capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to timely disclose the
8 disbursement.

9 3. Alleged Fraudulent Misrepresentation

10 Finally, the Complaint alleges that, by including a depiction of a logo similar to
11 the logo of the Democratic Party on "Corrupt," Andrew Honeycutt, acting on behalf of
12 HFC fraudulently misrepresented that the mailer was disseminated by the Democratic
13 Party. Complaint at 5. The Act prohibits federal candidates and their employees or
14 agents from fraudulently misrepresenting themselves, or any organization under their
15 control, as speaking or otherwise acting on behalf of any other candidate or political party
16 on a matter which is damaging to such other candidate or party. 2 U.S.C. § 441h(a).⁵ In
17 past enforcement matters dealing with fraudulent misrepresentation allegations, the
18 Commission has focused its analysis on whether the Respondent was acting like the
19 "official" party organization. See MUR 4919 (Charles Ball for Congress); see also MUR
20 5444 (National Democratic Campaign Comm.). In MUR 4919 (Ball), the Commission
21 found reason to believe that the Committee, Campaign Manager, and Finance Director

⁴ The original October Quarterly Report was 47 pages. The amended report was 1275 pages.

⁵ Section 441h(b) prohibits the fraudulent solicitation of funds, which seems to be further afield here where the available information does not indicate that DGCJ used the logo in connection with soliciting funds.

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1 knowingly and willfully violated 2 U.S.C. § 441h, and that the Committee treasurer
2 violated 2 U.S.C. § 441h, when Respondents, on behalf of the Republican candidate in
3 the California's 10th Congressional district, disseminated a communication within days of
4 the general election to Democratic voters in the district that was purportedly prepared by
5 a fictitious local party committee, the East Bay Democratic Committee, and signed by a
6 Democratic Congressman of a neighboring district that expressly advocated the defeat of
7 the Democratic incumbent. The communication's text suggested that committee was a
8 legitimate organization within the Democratic Party by including language such as
9 "Representing all Democrats in the East Bay." The communication urged the defeat of
10 the incumbent but did not include a disclaimer identifying who paid for it or whether it
11 was authorized by any candidate or committee.⁶

12 Unlike the communication in MUR 4919, in the instant matter, the "Corrupt"
13 communication cannot be construed as an instrument of an "official organization" within
14 the Democratic Party. Neither the complete name of the organization "Democrats for
15 Good Government" nor the use of the word "Democrat" is sufficient to conclude that
16 Respondents attempted to damage the Democratic Party. See 2 U.S.C. § 441h(a).
17 "Corrupt" does not contain text designed to make the communication appear that the
18 source of this communication was the Democratic Party. See Complaint Exhibit B.
19 Although Deborah T. Honeycutt was the Republican nominee in the 2008 general
20 election against Rep. Scott, the presence of the donkey logo on the "Corrupt"
21 communication does not rise to the level of a violation of section 441h(a). The donkey
22 logo, which is a generic symbol of the Democratic Party, is minimally displayed on the

⁶ After an investigation, the Commission found probable cause to believe as to Charles Ball for Congress, its treasurer and its campaign manager and conciliated with these respondents.

- 1 bottom left portion of the "Corrupt" communication that expressly advocates the defeat
- 2 of Rep. Scott. See Complaint Exhibit B. The available information does not suggest that
- 3 DGG represents itself as an arm of the official Democratic Party structure, such as a
- 4 district or local party committee as defined at 11 C.F.R. § 100.14(b). Accordingly, the
- 5 Commission finds no reason to believe that Honeycutt for Congress and Scott
- 6 Mackenzie, in his official capacity as treasurer, violated 2 U.S.C. § 441h(a).

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Andrew Honeycutt MUR 6138

I.

GENERATION OF MATTER

This matter was generated by a Complaint filed with the Federal Election Commission ("the Commission") by David Scott for Congress through its campaign manager Kwame Vidal. See 2 U.S.C. § 437g(a)(1).

II. INTRODUCTION

The Complaint alleges that Andrew Honeycutt ("Honeycutt"), campaign chairman for Honeycutt for Congress ("HFC") and spouse to candidate Deborah T. Honeycutt, violated the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with communications critical of Honeycutt's opponent, U.S. Representative David Scott. First, the Complaint alleges Andrew Honeycutt, as an agent of HFC, authorized the production of the communication titled "Corrupt" that included a disclaimer stating that it was paid for by DemocratsforGoodGovernment.com, even though an invoice and HFC disclosure report indicate that HFC in fact paid for it. See Complaint Exhibit A. In addition, the Complaint alleges that Andrew Honeycutt, as an agent of HFC, fraudulently misrepresented himself as speaking on behalf of the Democratic Party because the "Corrupt" communication included a depiction of the Democratic Party donkey logo. See *id.*

As set forth below, the Commission finds reason to believe that Andrew Honeycutt knowingly and willfully violated 2 U.S.C. § 441d(a) because it appears that

Honeycutt authorized and HFC paid for a communication that identified another entity paid for it. Further, the Commission finds no reason to believe the allegation that Andrew Honeycutt, as an agent of HFC, fraudulently misrepresented himself as acting on behalf of the Democratic Party. See 2 U.S.C. § 441h(a).

III. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

In the 2008 general election, Deborah T. Honeycutt was the Republican candidate for Congress opposing the Democratic incumbent, Rep. David Scott, in the 13th Congressional District of Georgia. HFC is the principal campaign committee for Deborah T. Honeycutt. The available information indicates that Andrew Honeycutt, the candidate's spouse, is the Committee's campaign chairman.

1. Democrats for Good Government and David Knox

DGG is an organization created by David Knox.

See <http://www.democratsforgoodgovernment.com>. DGG is not registered as a political committee with the Commission or the Georgia State Ethics Commission, and is not registered with the IRS as a section 527 organization. According to DGG's website, it is "[t]he place to get the facts about Democrats who are really doing the work for Democrats." See *id.* However, the entire content of the website appears to focus on material opposing a single candidate, Rep. Scott, including portions of local newspaper articles that are highly critical of Rep. Scott. See *id.*

Knox is also the owner and operator of DK Intermedia, a website development company. Both Knox and DK Intermedia were vendors to HFC for Deborah T. Honeycutt's 2006 and 2008 congressional campaigns; Honeycutt faced Rep. Scott in both

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1 general elections. The DK Intermedia website indicates it created an "informational site"
2 for Honeycutt's 2006 congressional campaign.¹ According to HFC's disclosure reports,
3 the Committee disbursed \$250 to David Knox on February 28 and on March 13, 2006 for
4 "website and photos," \$750 and \$350 on May 9 and July 7, 2006, respectively, for
5 "consulting-graphics/website maintenance," and \$350 and \$250 on July 31, 2006 and
6 February 6, 2007, respectively, for "consulting-graphics/website." HFC disbursed \$525
7 to DK Intermedia on May 7, 2008 for internet consulting.

8 The website for Democrats for Good Government contains a link to
9 www.voteoutdavidscott.com.² The site begins with a heading "Georgia's Congressional
10 13th District Corrupt Congre\$\$man," and continues with a cartoon figure identified as
11 Rep. Scott sitting at a desk surrounded by individuals identified as "Lobbyist" and piles
12 of cash with the U.S. Capitol in the background. The website directs the viewer to
13 "Check Him Out and Vote Him Out!!!" Several pages into the website is the cartoon
14 depiction of Scott sitting on a mound of cash as included on the "Corrupt"
15 communication. The website concludes, "No Disclaimer Necessary -- We only work for
16 the government part-time (ourselves the rest of the time.) Sponsored by Democrats for
17 Good Government!"

¹ The website states that "this site is no longer a part of this portfolio. There is no support for this candidate [etc]." [Emphasis in original]. http://www.dkentra.com/portfolio/web_port.htm

² The website link, www.voteoutdavidscott.com is now closed; however, the website can be accessed through the Democrats for Good Government website found at <http://www.democratsforgoodgovernment.com/voteoutdavidscott.com>.

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2. "Corrupt" Communication

A copy of the "Corrupt" communication at issue is included with the Complaint as Exhibit B. One side of the communication begins with the heading "CORRUPT DAVID SCOTT," followed by a picture of Rep. Scott and the statement "David Scott is CORRUPT!!!" The communication then refers the reader to www.voteoutdavidscott.com. The communication also contains a depiction of the Democratic Party donkey logo and the tagline, "Your Vote Counts for Change!" The other side of the communication refers to Scott as "The Worst Black Congressperson," and includes a cartoon depiction of Rep. Scott sitting on a mound of cash with the U.S. Capitol in the background. Both sides of the communication contain a disclaimer stating that it was paid for by "DemocratsForGoodGovernment.com." See Complaint Exhibit B. Neither the Complaint nor other available information indicates how the communication was distributed.

The Complaint also provided an invoice dated August 26, 2008 from 48HourPrint.com in the amount of \$1,385.75 for 25,000 double-sided "3.5 x 8.5 Rack Cards -- Corrupt." Complaint Exhibit A. The invoice was billed to "Andrew" at 160 Deer Forest Trail, Fayetteville, Georgia, and includes a "blind shipping address" for "David" at 2326 Nicole Drive, Hampton, Georgia. The invoice "Ship to" addressee is David Knox at an address in Jonesboro, Georgia. Public records indicate that Deborah and Andrew Honeycutt are the owners of the Fayetteville address. HFC disclosed a \$1,385.75 payment to 48 Hour Print on August 29, 2008 for "Printing" that corresponds to the invoice.

1 B. Legal Analysis

2 1. "Corrupt" Communication Disclaimer

3 The Complaint alleges that the "Corrupt" communication did not include the
4 required disclaimer. A political committee that makes a disbursement to finance a public
5 communication must include a disclaimer. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1).
6 Disclaimers are also required for public communications financed by any person that
7 expressly advocate the election or defeat of a clearly identified candidate. 2 U.S.C.
8 § 441d(a); 11 C.F.R. § 110.11(a)(2). The term "public communication" includes "mass
9 mailings" and "any other general public political advertising." 2 U.S.C. § 431(22);
10 11 C.F.R. § 100.26. Mass mailing is defined as a mailing by U.S. mail or facsimile of
11 more than 500 pieces of mail matter of an identical or substantially similar nature within
12 any 30-day period. 2 U.S.C. § 431(23); 11 C.F.R. § 100.27. The Commission has
13 determined that campaign literature "distributed to the general public at their place of
14 residence...constitutes general public political advertising." See MUR 4741 (Mary Bono
15 Committee) Factual and Legal Analysis (finding reason to believe that the Committee
16 violated 2 U.S.C. § 441d(a) by failing to include a disclaimer on campaign material left
17 on doorsteps of residences).

18 The disclaimer for a communication that is paid for and authorized by a
19 candidate, an authorized committee of a candidate, or its agents, shall clearly state that
20 the communication has been paid for by such authorized committee. 2 U.S.C.
21 § 441d(a)(1). The disclaimer for a communication not authorized by the candidate shall
22 clearly state the name and permanent street address, telephone number or World Wide
23 Web address of the person who paid for the communication and state that the

1 communication is not authorized by any candidate or candidate's committee. 2 U.S.C.

2 § 441d(a)(3). The Commission now addresses the communication in question.

3 The Complaint alleges that Honeycutt violated the Act's disclaimer provisions
4 when Honeycutt authorized, and HFC paid for a communication, "Corrupt," that failed to
5 state that Deborah T. Honeycutt authorized it or that HFC paid for it. The available
6 information, including the HFC's amended 2008 October Quarterly Report and the
7 invoice, see Complaint Exhibit A, indicates that HFC in fact paid \$1,385.75 for 25,000
8 "Corrupt" "rack cards" on August 29, 2008. However, neither the "Corrupt"
9 communication, the Complaint, nor other available information indicates how the
10 communication was disseminated. HFC's amended October Quarterly Report includes
11 disbursements on September 5, 2008 to Donald W. Allen II, in the amount of \$1,000.00
12 for consulting/canvassing and on September 25, 2008 to Dan P. Young, in the amount of
13 \$4,000 for consulting/canvassing, which may be related to the dissemination of
14 "Corrupt." If the communication qualifies as a public communication, i.e., if it was mass
15 mailed, see 11 C.F.R. § 100.27, or otherwise qualifies as general public political
16 advertising, the communication would need to contain a disclaimer stating that HFC paid
17 for and authorized the communication. See 2 U.S.C. § 441d(a)(1). Because the
18 communication did not include such a disclaimer, Respondent may have violated
19 2 U.S.C. § 441d(a).

20 The available information further suggests that such a violation may have been
21 knowing and willful. The phrase knowing and willful indicates that "actions [were] taken
22 with full knowledge of all of the facts and recognition that the action is prohibited by
23 law." 122 Cong. Rec. H 3778 (daily ed. May 3, 1976); see also *AFL-CIO v. FEC*, 628

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1 F.2d 97-98, 101-02 (D.C. Cir.), *cert. denied*, 449 U.S. 982 (1980) (noting that a "willful"
2 violation includes "such reckless disregard of the consequences as to be equivalent to a
3 knowing, conscious, and deliberate flaunting of the Act," but concluding on the facts
4 before it that this standard was not met); *National Right to Work Comm. v. FEC*, 716 F.2d
5 1401, 1403 (D.C. Cir. 1983) (same). The available information indicates that the HFC,
6 through its agent Andrew Honeycutt, ordered the "Corrupt" communication, and as
7 indicated by the 48HourPrint.com invoice, provided the personal address of the candidate
8 and campaign chairman as the billing address. However, "Corrupt" includes a
9 disclaimer, "Paid for by DemocratsforGoodGovernment.com," and contains the same
10 headline, "The Worst Black Congressperson," and cartoon depiction of Rep. Scott as
11 included on the DGG website.

12 Honeycutt's apparent efforts to try to hide his involvement with the "Corrupt"
13 communication so that any recipients would not know that Honeycutt or the Committee
14 authorized and paid for "Corrupt" further supports a recommendation that Andrew
15 Honeycutt knowingly and willfully violated the Act. The available information indicates
16 an ongoing relationship between HFC and David Knox. *See supra* p. 2 ln. 21- p. 3 ln.7.
17 In addition, the invoice at Complaint Exhibit A further supports this ongoing relationship
18 because it lists the name "Andrew" and the billing address for the candidate and her
19 spouse and campaign chairman, Andrew Honeycutt, as well as the name "David." *See*
20 *supra* p. 4 ln. 14-22. By paying for a communication with a disclaimer stating that a
21 third-party organization paid for it, Honeycutt attempted to conceal his identity as the
22 person that authorized and that HFC paid for the 25,000 rack cards. Honeycutt attempted
23 to avoid any explicit connection between the "Corrupt" communication and the

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1 Honeycutt campaign by stating that DGG paid for the "Corrupt" communication.³ Thus,
2 Respondent appears to have knowingly and willfully violated the Act. Accordingly, the
3 Commission finds reason to believe that Andrew Honeycutt, knowingly and willfully
4 violated 2 U.S.C. § 441d(a).

5 **2. Alleged Fraudulent Misrepresentation**

6 In addition, the Complaint alleges that, by including a depiction of a logo similar
7 to the logo of the Democratic Party on "Corrupt," Andrew Honeycutt, acting on behalf of
8 HFC, fraudulently misrepresented that the mailer was disseminated by the Democratic
9 Party. Complaint at 5. The Act prohibits federal candidates and their employees or
10 agents from fraudulently misrepresenting themselves, or any organization under their
11 control, as speaking or otherwise acting on behalf of any other candidate or political party
12 on a matter which is damaging to such other candidate or party. 2 U.S.C. § 441h(a).⁴ In
13 past enforcement matters dealing with fraudulent misrepresentation allegations, the
14 Commission has focused its analysis on whether the Respondent was acting like the
15 "official" party organization. See MUR 4919 (Charles Ball for Congress); see also MUR
16 5444 (National Democratic Campaign Comm.). In MUR 4919 (Ball), the Commission
17 found reason to believe that the Committee, Campaign Manager, and Finance Director
18 knowingly and willfully violated 2 U.S.C. § 441h, and that the Committee treasurer
19 violated 2 U.S.C. § 441h, when Respondents, on behalf of the Republican candidate in
20 the California's 10th Congressional district, disseminated a communication within days of

³ Honeycutt was campaign chairman for an experienced candidate and political committee with a professional treasurer. Honeycutt was a candidate in 2006 as well as 2008 and HFC's treasurer, Scott Mackenzie, is an "FEC Compliance Officer" with BMW Direct, a Washington, D.C. political consulting firm. HFC's disclosure reports indicated total activity in amounts exceeding \$1.1 million and \$4.7 million for the 2006 and 2008 election cycles, respectively.

⁴ Section 441h(b) prohibits the fraudulent solicitation of funds, which seems to be further afield here where the available information does not indicate that DGG used the logo in connection with soliciting funds.

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1 the general election to Democratic voters in the district that was purportedly prepared by
2 a fictitious local party committee, the East Bay Democratic Committee, and signed by a
3 Democratic Congressman of a neighboring district that expressly advocated the defeat of
4 the Democratic incumbent. The communication's text suggested that committee was a
5 legitimate organization within the Democratic Party by including language such as
6 "Representing all Democrats in the East Bay." The communication urged the defeat of
7 the incumbent but did not include a disclaimer identifying who paid for it or whether it
8 was authorized by any candidate or committee.⁵

9 Unlike the communication in MUR 4919, in the instant matter, the "Corrupt"
10 communication cannot be construed as an instrument of an "official organization" within
11 the Democratic Party. Neither the complete name of the organization "Democrats for
12 Good Government" nor the use of the word "Democrat" is sufficient to conclude that
13 Respondents attempted to damage the Democratic Party. See 2 U.S.C. § 441h(a).
14 "Corrupt" does not contain text designed to make the communication appear that the
15 source of this communication was the Democratic Party. See Complaint Exhibit B.
16 Although Deborah T. Honeycutt was the Republican nominee in the 2008 general
17 election against Rep. Scott, the presence of the donkey logo on the "Corrupt"
18 communication does not rise to the level of a violation of section 441h(a). The donkey
19 logo, which is a generic symbol of the Democratic Party, is minimally displayed on the
20 bottom left portion of the "Corrupt" communication that expressly advocates the defeat
21 of Rep. Scott. See Complaint Exhibit B. The available information does not suggest that
22 DGG represents itself as an arm of the official Democratic Party structure, such as a

⁵ After an investigation, the Commission found probable cause to believe as to Charles Ball for Congress, its treasurer and its campaign manager and conciliated with these respondents.

MUR 6138 (Andrew Honeycutt)
Factual and Legal Analysis
Page 10

- 1 district or local party committee as defined at 11 C.F.R. § 100.14(b). Accordingly, the
- 2 there is no reason to believe allegation that Andrew Honeycutt, as an agent of HFC,
- 3 fraudulently misrepresented himself as acting on behalf of the Democratic Party. See
- 4 2 U.S.C. § 441h(a).

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Democrats for Good Government **MUR 6138**

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission ("the Commission") by David Scott for Congress through its campaign manager Kwame Vidal. *See* 2 U.S.C. § 437g(a)(1).

II. INTRODUCTION

The complaint alleges that Democrats for Good Government ("DGG") received contributions and made an expenditure in excess of \$1,000 in 2008, but failed to register with the Commission as a political committee. *See* 2 U.S.C. §§ 433 and 434. Based upon the complaint, the response, and the available information, the Commission dismisses the allegation that Democrats for Good Government violated 2 U.S.C. §§ 433 and 434, and cautions the respondent.

III. FACTUAL AND LEGAL ANALYSIS**A. Factual Background**

DGG is not registered as a political committee with the Commission or the Georgia State Ethics Commission, and is not registered with the IRS as a section 527 organization. DGG is comprised of a single member, its creator David Knox. According to DGG's website, it is "[t]he place to get the facts about Democrats who are really doing the work for Democrats." *See* <http://www.democratsforgoodgovernment.com>. However, the entire content of the website appears to focus on material opposing Rep. David Scott. *See id.*

1 Included with the complaint was a communication herein entitled "Corrupt," a 3.5 x 8.5
2 inch double-sided card. One side of the communication begins with the heading "CORRUPT
3 DAVID SCOTT," followed by a picture of Rep. Scott and the statement "David Scott is
4 CORRUPT!!!" The communication then refers the reader to www.voteoutdavidscott.com. The
5 communication also contains a depiction of the Democratic Party donkey logo and the tagline,
6 "Your Vote Counts for Change!" The other side of the communication refers to Scott as "The
7 Worst Black Congressperson," and includes a cartoon depiction of Rep. Scott sitting on a mound
8 of cash with the U.S. Capitol in the background. Both sides of the communication contain a
9 disclaimer stating that it was paid for by "DemocratsForGoodGovernment.com." See Complaint
10 Exhibit B.

11 The complaint also included an invoice dated August 26, 2008 from 48HourPrint.com in
12 the amount of \$1,385.75 for 25,000 double-sided copies of the "3.5 x 8.5 Rack Cards --
13 Corrupt." See Complaint Exhibit A. The invoice was billed to "Andrew" at 160 Deer Forest
14 Trail, Fayetteville, Georgia, and includes a "blind shipping address" for "David" at 2326 Nicole
15 Drive, Hampton, Georgia. The invoice "Ship to" addressee is David Knox at an address in
16 Jonesboro, Georgia. Public records indicate that Deborah and Andrew Honeycutt are the owners
17 of the Fayetteville address. Deborah T. Honeycutt was the 2008 Republican candidate for
18 Congress opposing the Democratic incumbent, Rep. David Scott, in the 13th Congressional
19 District of Georgia. HFC is the principal campaign committee for Deborah T. Honeycutt, and
20 her spouse, Andrew Honeycutt, is the Committee's campaign manager.

21 David Knox personally designed and created the "Corrupt" communication. The
22 available information does not suggest that DGG solicited or received contributions. The funds
23 to print copies of "Corrupt" were provided by Andrew Honeycutt, who had known Knox

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1 personally and professionally since 2003 through their membership in an Atlanta-area church.
2 Knox asked Honeycutt for a personal loan to procure materials for DGG. Honeycutt provided
3 Knox with HFC's debit card, which Knox used to pay \$1,385.75 to 48HourPrint.com for copies
4 of the "Corrupt" communication. According to Knox and Andrew Honeycutt, Knox later repaid
5 Andrew Honeycutt for the funds used by Knox for the purchase of copies of the "Corrupt"
6 communication in five installments. At the time of the final payment, the total amount was
7 deposited into HFC's account. *See* Honeycutt for Congress Response to Commission's
8 Subpoena ("HFC Response") Attachment 3.

9 **B. Legal Analysis**

10 The complaint alleges that in calendar year 2008 DGG received contributions and made
11 expenditures in excess of the registration and reporting requirements of the Federal Election
12 Campaign Act of 1971, as amended ("the Act"). *See* 2 U.S.C. §§ 433 and 434. The Act defines
13 a "political committee" as any committee, club, association, or other group of persons which
14 receives "contributions" or makes "expenditures" for the purpose of influencing a Federal
15 election which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). The
16 term "contribution" is defined to include "any gift, subscription, loan, advance, or deposit of
17 money or anything of value made by any person for the purpose of influencing any election for
18 Federal office." 2 U.S.C. § 431(8)(A)(i). The term "expenditure" is defined to include "any
19 purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value,
20 made by any person for the purpose of influencing any election for Federal office." 2 U.S.C.
21 § 431(9)(A)(i). Groups that trigger political committee status are required to register with the
22 Commission and publicly report all of their receipts and disbursements. 2 U.S.C. §§ 433
23 and 434.

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1 The Supreme Court has held that only organizations whose major purpose is campaign
2 activity can potentially qualify as political committees under the Act. *See, e.g. Buckley v. Valeo*,
3 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986). The
4 Commission has long applied the Court's major purpose test in determining whether an
5 organization is a "political committee" under the Act, and it interprets that test as limited to
6 organizations whose major purpose is Federal campaign activity (*i.e.*, the nomination or election
7 of a Federal candidate). *See* Political Committee Status: Supplemental Explanation and
8 Justification, 72 Fed. Reg. 5595, 5597, 5601 (Feb. 7, 2007).

9 According to David Knox, DGG did not solicit or receive any contributions, and the
10 available information does not suggest otherwise. Therefore, Knox's repayment to HFC of
11 \$1,385.75 for the printing cost of "Corrupt," apparently came from Knox's personal funds, not
12 DGG's funds. To the extent that Knox was the ultimate payor of the \$1,385.75 for the printing
13 of the "Corrupt" communication that expressly advocated the defeat of Rep. Scott, under
14 11 C.F.R § 100.22(a), it appears that DGG, through Knox, made expenditures by way of the
15 "Corrupt" communication. Therefore, DGG satisfied the statutory in excess of \$1,000
16 expenditure threshold for political committee status. Because DGG's sole activity to date has
17 been advocating the defeat of Rep. Scott in his reelection efforts, it also appears that DGG has
18 met the Commission's major purpose test. As such, it appears that DGG may constitute a
19 political committee under the Act. Nonetheless, under the circumstances present here, the
20 Commission exercises its prosecutorial discretion and dismisses the allegation that Democrats
21 for Good Government violated 2 U.S.C. §§ 433 and 434, and cautions the respondent.

22 Knox stated that DGG has been dormant since 2008 and that its primary activity
23 consisted of its websites, which were likely created and designed at minimal cost; however,

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1 Knox still maintains the websites, and the www.voteoutdavidscott.com website was recently
2 updated.¹ The available information suggests that the “Corrupt” communication may have been
3 minimally distributed. According to Knox, DGG does not have any bank accounts, and its only
4 expense is a nominal monthly payment of \$9.95 for webhosting. As evidenced by the fact that
5 DGG through Knox had to borrow a relatively low amount of funds to finance the “Corrupt”
6 communication, it appears that DGG has no, or limited, funds of its own. Moreover, Knox stated
7 that DGG has made no solicitations and received no contributions, and the Commission has
8 discovered no information to the contrary. Accordingly, considering DGG’s limited conduct and
9 apparent minimal costs spent toward the “Corrupt” communication and DGG’s minimal activity
10 since 2008, the Commission exercises its prosecutorial discretion and dismisses the allegation
11 that Democrats for Good Government violated 2 U.S.C. §§ 433 and 434 by failing to register and
12 report as a political committee, and cautions this respondent. *See Heckler v. Chaney*, 470 U.S.
13 821 (1985).

¹ Knox recently updated his www.voteoutdavidscott.com website to include content alleging that Rep. Scott’s conduct contributed to a county school district within the 13th Congressional District losing its accreditation. In addition, the website has been updated to include additional links to news articles critical of Rep. Scott. *See* www.voteoutdavidscott.com (last viewed July 15, 2011).

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